

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ERIC WARREN,

Plaintiff,

v.

N. NDU,

Defendant.

No. 1:21-cv-00120-JLT-HBK (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS**

(Doc. 26)

Eric Warren filed this prisoner civil rights action under 42 U.S.C. § 1983. (Doc. 1). The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The Magistrate Judge filed a Findings and Recommendations, recommending the District Court grant in part Plaintiff's Motion to Strike Affirmative Defenses. (*See* Doc. 26.) In relevant part, the Magistrate Judge recommended the District Court grant Plaintiff's Motion as to Defendant's sixth, seventh, and eighth affirmative defenses, deny the Motion as moot as to Defendant's fifth, ninth, tenth, and twelfth affirmative defenses, and deny the Motion as to Defendant's first, second, third, and fourth affirmative defenses. (*Id.* at 9-10). Plaintiff filed objections, disputing only the magistrate judge's recommendation not to strike Defendant's fourth affirmative defense of "no vicarious liability." (*See* Doc. 30.)

According to 28 U.S.C. § 636(b)(1)(C), the Court has conducted a de novo review of this

1 case. Having carefully reviewed the entire file, the Court finds the Findings and
2 Recommendations to be supported by the record and by proper analysis. The Magistrate Judge
3 correctly noted that Plaintiff's initial Complaint and First Amended Complaint both asserted that
4 claims against other health care professionals for the constitutional violations that Plaintiff later
5 ascribed solely to Defendant Ndu in the Second Amended Complaint. (Doc. 26 at 5). Though
6 Plaintiff is correct that these individuals are not named in Plaintiff's SAC and the SAC supersedes
7 those prior pleadings, (Doc. 30 at 2), in an abundance of caution, the Magistrate Judge declined to
8 strike an affirmative defense that may prove relevant as the case progresses. The Court agrees,
9 and Plaintiff's objections do not meaningfully call into question the Magistrate Judge's reasoning
10 in the F&R. Accordingly, the Court **ORDERS**:

- 11 1. The Findings and Recommendations, filed on November 20, 2023, (Doc. 26), are
12 **ADOPTED IN FULL.**
- 13 2. The matter is returned to the Magistrate Judge for further proceedings.

14
15 IT IS SO ORDERED.

16 Dated: **December 15, 2023**


UNITED STATES DISTRICT JUDGE